CIVIL SERVICE COMMISSION

City of Tucson **Minutes**

Luis Clark
Appeal of Termination
Environmental & General Services Department
June 14, 2019, July 23, 2019 and August 23, 2019

A quorum of the Civil Service Commission of the City of Tucson met at 9:00 AM on Friday, June 14, 2019, at City Hall, 255 W. Alameda, 1st Floor Conference Room in Tucson, Arizona, for an Appeal of Termination filed by Luis Clark from the Environmental & General Services Department.

Present were Chairperson Thomas Palomares, Commission Members Becky Montaño and Paul Fimbres. Staff present: Donna Aversa, Legal Counsel; Elsa Quijada, HR Administrator, Secretary; and Armida Saufley, Executive Assistant of Human Resources, Recording Secretary.

Brenda Dabdoub, ESQ, represented Mr. Clark; Jacinta Figueroa, Principal Assistant City Attorney, represented the Environmental & General Services Department. Director Carlos De La Torre was also present.

This appeal was held in Open Session; however, the rule was invoked.

During preliminary matters, the Civil Service Commission addressed the pending continuance request filed by appellant and a Motion in Limine filed by the City. Both parties were given an opportunity to present arguments.

At 9:25 AM a motion made by Commissioner Fimbres, duly seconded, to go into Executive Session for legal advice pursuant to A.R.S. §38-431.03(A)(3) and was passed by a voice vote of 3 – 0. The Commission resumed the open meeting at 9:35 AM.

In open session, the Civil Service Commission addressed the pending items. Chairperson Palomares noted that appellant had previously been granted a continuance allowing adequate time to prepare for the hearing and denied a second continuance. Chairperson Palomares then addressed the Motion in Limine and granted the request to exclude records requested as part of a public records request, medical records, labor agreements and related matters.

The hearing continued as scheduled.

9:45 – 10:20 City's exhibits A, B and C entered into evidence

10:05 – 10:15 Commission ruled on Respondent's objection of City's exhibits; exhibit C-11 and C-12 have been excluded and not entered as evidence.

Witnesses sworn during hearing:

1.	Lori Ehman (6/14/19)	5.	Carlos De La Torre (7/23/19)
2.	Kristie Mendoza (6/14 and 7/23/19)	6.	Justin Nichols (7/23/19)
3.	Frank Bonillas (7/23/19)	7.	Javier Montante (7/2319)
4.	Richard Byrd (7/23/19)	8.	Luis Clark (8/23/19)

Per Exhibit A, actions Mr. Clark knew or reasonably should have known would result in disciplinary action are as follows:

I. Mr. Clark has been employed with the City of Tucson for over 11 years. During these years he was provided training for the positions he has held, copies and access to Administrative Directives (A.D.'s) including

guidelines for proper use of City vehicles as well as the Rules of Conduct, Departmental Policies, and Civil Service Rules. As a tenured employee, Mr. Clark is well aware that any violation of these rules would result in disciplinary action up to and including termination.

Since April 3, 2016, Mr. Clark has been in the positon as an Environmental Services Inspector (ESI). As an ESI, work tasks include monitoring methane emissions at various City owned closed landfills and the active Los Reales Landfill, collecting wastewater samples at various City owned permitted facilities, and collecting groundwater samples at City owned groundwater monitoring wells. Associated tasks include delivering groundwater and wastewater samples to chemistry laboratories which are: Tucson Water Quality Lab (TWQL) for groundwater samples and Turner Laboratories for wastewater samples. Monitoring and sample collection sites are located throughout the City. Mr. Clark was provided training and completed these tasks throughout his years in this position.

On November 26, 2018, Environmental Scientist, Lori Ehman, who is responsible for reviewing Mr. Clark's monitoring data, brought to the attention of his supervisor, Frank Bonillas and the Environmental Manager that Mr. Clark's monitoring results for Congress/Nearmont Landfill (CNM), the Irvington Road Landfill (IR) and Los Reales Landfill (LR) were questionable. Ms. Ehman's concern was his recorded times were too close together to allow him to perform his required duties accurately when completing a route. Because of this she could not verify whether the monitored readings were taken at the corresponding methane probes.

Reviewing the Zonar data and Mr. Clark's work-day history revealed several instances of misuse of his assigned vehicle (#4701). On December 10, 2018, Mr. Clark's Supervisor, Mr. Bonillas, met with Deputy Director, Pat L. Tapia and Human Resources Manager, Susana J. Castillo, to advise them of these issues. After this meeting, Mr. Clark's supervisor was directed to conduct an investigation of Mr. Clark's use of his City vehicle during work days from April 16, 2018, through December 12, 2018 and investigate his monitoring data in question.

The investigation established two serious infractions:

- Misuse of City vehicle for personal usage for a total of 29:48 hours from April 16, 2018 – December 12, 2018
- Falsification of monitoring data

Misuse of City Vehicle for Personal Usage

Mr. Clark has been counseled on the misuse of city vehicles for personal use and he is aware of the prohibition on using his assigned vehicle for personal errands. Despite this, Mr. Clark consistently disregarded his commitment to comply with City policies and disregarded City Administrative Directive (A.D.) 2.02-5 (Rules of Conduct) and A.D 6.01-1 (Responsibilities Regarding Utilization of City Vehicles). From April 16, 2018, through December 12, 2018, Mr. Clark continuously used his assigned City vehicle to conduct personal errands. In addition to conducting personal errands, Zonar reports also show his vehicle idling for long periods of time.

These personal errands were conducted outside of the lunch period Mr. Clark reported in the time keeping software called Kronos and include using his vehicle to:

- Travel from his work site to a nearby restaurant and returning to his work site with no apparent City business purpose

- Multiple trips from his work site to his home and back to the work site for no City business purpose
- Travel from his work site and back following visits to several unknown locations (residential and commercial) for no City business

Attachment A reflects the total City loss work time of 29:48 hours.

The chart below identifies ***excerpts*** from Attachment A – please see attachment for acronym definitions and a reflection of all 29:48 hours:

Date	Recorded Time	Vehicle Action	Zonar Truck Location	Time Lapse	Kronos Lunch	Comment
12/6/18	10:41:58	Start	4645 S Harrison Rd (Harrison Hills Work Site)	1:21:53	11:04-11:34	Vehicle used to travel from work site, past TOPSC, to personal home. Traveling and at personal home during reported lunch.
	11:20:09	Stop	5064 S Wild Mare Rd			
	11:37:14	Start	5064 S Wild Mare Rd			
	12:03:51	Stop	TOPSC			
12/4/18	9:20:08	Stop	2517 E 23rd St (Credit Union)	0:34:46		Arrived at Credit Union from Harrison County Landfill work site. Location not on pathway back to TOPSC.
	9:24:04	Start	2517 E 23rd St (Credit Union)			
	9:54:54	Stop	TOPSC			
	10:28:39	Start	TOPSC	1:17:25	10:59-11:29	Used vehicle to travel to personal home from TOPSC. Recorded lunch during visit to home and travel time.
	10:44:50	Stop	5064 S Wild Mare Rd			
	11:22:10	Start	5064 S Wild Mare Rd			
	11:36:10	Arrive	3925 S 6th Ave (Whataburger)			
	11:42:30	Depart	3925 S 6th Ave (Whataburger)			
	11:46:04	Stop	TOPSC			
	13:25:47	Start	TOPSC	0:32:41		Travel purpose unknown as no City business noted.
	13:58:28	Stop	TOPSC			
11/28/18	7:46:46	Stop	5064 S Wild Mare Rd	0:27:15		Used vehicle to travel to personal home from TWQL.
	8:14:01	Start	5064 S Wild Mare Rd			
	9:12:53	Start	TOPSC	2:08:17	11:01-11:31	Traveled to TWA from TOPSC.
	9:19:11	Stop	4616 S 6th Ave (Metro PCS)			Stopped briefly at Metro PCS and at Safeway Shopping Center for 30 minutes. Traveled to personal home from TWQL for 26 minutes. Traveling during portion reported lunch.
	9:19:46	Start	4616 S 6th Ave (Metro PCS)			
	9:33:21	Stop	2920 W. Valencia (Safeway)			
	10:03:53	Start	2920 W. Valencia (Safeway)			

	10:29:49	Stop	5064 S Wild Mare Rd			
	10:56:02	Start	5064 S Wild Mare Rd			
	11:21:10	Stop	TOPSC			
11/21/18	6:08:47	Start	TOPSC	3:25:06		Vehicle Idled from 6:08-6:29 (21 minutes). Drove past work site at Congress/Nearmont (CNM) to travel to 1231 St Mary's (Whataburger). Arrived at work site (CNM) and vehicle idled for 136 minutes.
	6:29:36	Depart	TOPSC			
	6:45:44	Arrive	1231 W St Mary's (Whataburger)			
	6:53:23	Depart	1231 W St Mary's (Whataburger)			
	7:14:41	Stop	955 W Mission Ln (CNM Work Site)			
	7:17:09	Start	955 W Mission Ln (CNM Work Site)			
	9:33:53	Depart	955 W Mission Ln (CNM Work Site)			
	10:16:39	Start	TOPSC	0:51:16	No lunch taken, Early Out	Vehicle used to travel to 777 S Alvernon Way and to Credit Union with no City business. CNM was the only work task completed.
	10:31:40	Stop	777 S Alvernon Way			
	10:43:11	Start	777 S Alvernon Way			
	10:48:46	Stop	2526 E 22nd St (Credit Union)			
	10:51:13	Start	2526 E 22nd St (Credit Union)			
	11:07:55	Stop	TOPSC			
11/20/18	6:04:14	Start	TOPSC	0:10:57		Vehicle used to travel to Circle K with no City business.
	6:07:30	Stop	3737 S Park Ave (Circle K)			
	6:12:39	Start	3737 S Park Ave (Circle K)			
	6:15:11	Arrive	TOPSC			
	6:41:26	Depart	TOPSC	0:26:15		Vehicle idled for 26 minutes.
	10:14:35	Start	2174 W Silverbell Tree Dr (Silverbell work site)	1:38:33	11:01-11:31	Vehicle used to travel to personal home from Silverbell work site (no City business). Traveling during a portion of reported lunch.
	10:41:38	Stop	5064 S Wild Mare Rd			
	11:10:01	Start	5064 S Wild Mare Rd			
	11:20:49	Arrive	3927 S Mission Rd (McDonalds)			
	11:23:26	Depart	3927 S Mission Rd (McDonalds)			
	11:53:08	Stop	TOPSC			

11/8/18	7:11:45	Start	TOPSC	0:53:30		Vehicle used for lunch with no City business.
	7:32:33	Arrive	1231 W St Mary's (Whataburger)			
	7:45:52	Depart	1231 W St Mary's (Whataburger)			
	8:05:15	Arrive	TOPSC			
	8:31:45	Depart	5300 E Los Reales Rd (LR worksite)	1:19:29	12:02-12:32	Vehicle used to travel from LR work site to CNM (no City business) then to unknown residence.
	8:48:29	Stop	920 W Mission Ln (CNM)			
	8:59:14	Start	920 W Mission Ln (CNM)			
	8:12:20	Arrive	701 W Louisiana St (Residence)			
	9:42:14	Depart	701 W Louisiana St (Residence)			
	9:51:14	Stop	TOPSC			

Falsification of Monitoring Data

After careful review of three (3) of Mr. Clark's methane sampling events, it has been determined that several of his monitored methane probe data/results were not properly obtained. Mr. Clark's sample times were compared to the Zonar data showing his location and the times do not correspond or are grossly in conflict. Methane sampling requires a step by step process which includes:

- Unlocking/unbolting the well vault
- Opening the well/vault lid
- Setting up the monitoring device
- Purging the individual probe depths (each probe can have 2-3 depths)
- Retrieving/recording the data
- Removing the monitoring device
- Closing the well/vault lid (locking when required)
- Travel to the next probe, which can be a walking distance of 175-200 feet OR require use of vehicle to drive to the next probe

As an experienced and trained ESI, Mr. Clark is fully aware of this procedure.

On December 14, 2018, Environmental Scientist Ms. Ehman and Mr. Clark's supervisor Mr. Bonillas verified that both Zonar for his vehicle and the methane monitoring device (GEM/Landtec) #1159, were recording real-time accurately in synchronization. This synchronization rules out the possibility of misreads from either Zonar or the GEM/Landtec device.

Below are the listed areas and explanations of why your location and times do not correlate.

Congress/Nearmont Landfill

Congress/Nearmont Landfill (CNM) monitoring data, dated November 21, 2018, was reviewed. Zonar shows Mr. Clark's vehicle arriving on-site at 7:07 am and completely stopping near probe CNM-01. At this time his vehicle was not turned off and was idling. Mr. Clark's monitoring report shows he sampled four (4) probes: CNM-01, CNM-02, CNM-03, and CNM-04 from 7:12 am - 7:55 am; these results correspond with the

required purge times for each depth. However, the time required to conduct the step by step process previously identified does not correlate with a reasonable monitoring time.

For example:

- CNM-01 was purged at 7:20 am
- CNM-02 is an estimated 150-175 feet from CNM-01 and the data reflects that CNM-02 data was recorded at 7:23 am.
- During this time, Mr. Clark's vehicle remained idling for the same location near CNM-01 up until 9:32 am.

Mr. Clark would have had to remove the monitoring device from CNM-01, close the well/vault lid (lock if needed), walk an estimated 150-175 feet, and start the process again for probe CNM-02.

It is physically impossible to complete this in the 3 minutes that he reported given the distance and time it takes to finish reading a probe and the set up time it takes to read another probe.

CNM-05 was sampled at 8:00 am, only 5 minutes from the reading of CNM-04, which was recorded at 7:55 am. With Mr. Clark's vehicle still idling near CNM-01, it is not possible for him to have conducted this reading, as CNM-05 is inside a construction site. For Mr. Clark to reach this location he would have had to:

- Walk from CNM-04 (which is at a dead-end alley), south past the idling vehicle, to the southern entrance of the construction site
- Sign-in at the construction trailer
- Walk to CNM-05 (which is 2,000 feet from CNM-04)
- Open the vault
- Connect the device
- Purge and record your first reading

Sundt Construction verified he did not sign-in and he did not notify the construction site of his presence and intent to monitor the probes within the boundaries of the construction site. Additionally, after further investigation, it was identified that the CNM-05 probe is currently on a steep cliff and not in a safe position to be monitored, which would have required Mr. Clark to notate that he was unable to sample due to the unsafe position of the probe.

CNM-06 was monitored next at 8:13 am, only 5 minutes after the previous reading of CNM-05. With his vehicle idling, for Mr. Clark to obtain this reading, he would have to:

- Walk from CNM-05 to the construction site exit–gate, which is approximately 1,000 feet
- Walk around the fence perimeter to CNM-06 located at 333 S. Melwood Ave., which is approximately 1,200 feet
- With the probe located inside a fenced private residence property with a pet/guard dog, to gain access he would have had to request it from the property resident
- Start the process of monitoring CNM-06

During the investigation, Environmental Scientist Ms. Ehman made contact with the resident, who said no one has contacted her for over one (1) year to gain access to probes CNM-06 and CNM-07.

The next two (2) probes CNM-08 and CNM-09 were sequentially recorded from 8:30 am to 8:50 am. However, as stated above, it has already been established that the timing for probes CNM-05 and CNM-06 were grossly off, therefore making the readings/recording for probes CNM-08 and CNM-09 unbelievable.

CNM-10 is the next probe for which Mr. Clark provided recordings with readings/data. It is impossible to have obtained readings/data for this probe because this probe, which was located inside the construction site, was destroyed/removed during the Congress Landfill excavation process on August 8, 2018; confirmed by Environmental and Engineering Consultants (EEC) and therefore no longer exists.

CNM-11's first reading was recorded at 9:10 am; however, this data is not reliable due to the concerns from the information identified in CNM-10

CNM-12's first reading was at 9:21 am. However, the timing is not possible as previously identified with CNM-05-CNM-11. Additionally, this probe is located inside the construction site and to reach the probe he would have had to:

- Walk south back to the construction site entrance from CNM-11 which is approximately 2,200 feet
- Sign-in to the construction site (which we already identified there is no record of Mr. Clark signing in)
- Walk north along the fenced perimeter, which is approximately another 2,200 feet, to CNM-12

During this monitoring event, Mr. Clark's vehicle was idling in the same position from 7:07-9:32 am; Zonar data shows no motion movement from this vehicle. Mr. Clark's vehicle should not be left unattended with the engine running per Rules of Conduct A.D. 2.02-5, II A.3 *Use and maintain in a reasonable manner, tools, machines, vehicles*, and other City property and equipment *to assure their usefulness and longevity*. Report malfunctions or hazardous conditions of tools, machines, vehicles, and other City property and equipment to assure proper maintenance and safety.

This review of the Congress/Nearmont Landfills monitoring event substantiated Mr. Clark falsified methane monitoring data at this site.

Irvington Landfill

Irvington Landfill (IR) monitoring data, dated December 5, 2018, was reviewed. Zonar shows Mr. Clark's vehicle arriving at the Irvington Landfill at 7:35 am and vehicle turned off at 7:40 am near probe IR-4. His vehicle remained powered off from 7:408:33 am. IR-1 reading was recorded at 7:38 am. This is not possible for two reasons:

- The monitored probe is approximately 604 feet away from the vehicle location on the western side of the landfill. The eastern and western sides are divided by a steep wash impassible by the vehicle, which would then require his to walk through the wash to reach IR-1
- More problematic, the first reading was taken when his vehicle was still in motion at 7:38 am.

IR-2 was monitored between 7:50 am - 7:53 am. This is not possible as the truck was parked near IR-4. Mr. Clark's location was already established on the eastern side of the landfill.

Probes IR-3 through IR-5 are located on the eastern side of the landfill and near the parked vehicle. These readings *could* have been taken during the time frames recorded of 7:59 am - 8:23 am due to his vehicle location; however, these are questionable due to the unreliable data from IR-1 and IR-2.

Probe IR-6 recorded readings are from 8:28 - 8:32 am. Mr. Clark's vehicle was powered on at 8:33 am. For these readings to be accurate, he would have had to:

- Disconnect the meter
- Close the vault
- Walk back to the vehicle at the IR-4 location and start the vehicle, which is approximately 450 feet away

All of these steps would have taken place within one (1) minute, when the vehicle was started at 8:33 am. Zonar shows Mr. Clark's vehicle moving to the IR-13 location and turned off at 8:37 am. IR-7 was monitored from 8:39 - 8:43 am. This is not possible as he would have to:

- Walk from IR-13 to IR-7, which is approximately 1,500 feet
- Open the vault
- Connect the meter
- Start the process of monitoring IR-7

This means Mr. Clark would have started the monitoring process within the 2 minutes after he turned off his vehicle at 8:37 am.

IR-8 and IR-9 were recorded from 8:46 - 9:00 am. This is not possible as the timing and distance to reach these probes has been established as unreasonable with the recordings from IR-7.

IR-10 readings were recorded from 9:07 - 9:11 am. This is not possible. The distance from IR-9 to IR-10 is approximately 1,620 feet and located on the western side of the landfill wash. There is not enough time to walk to this probe, take the reading, and walk back to IR-13 to start the vehicle by 9:12 am.

The vehicle moved from IR-13 to IR-10, on the western side of the landfill wash and was turned off at 9:25 am. IR-11 and IR-12 were monitored from 9:27 - 9:42 am. It is not possible to walk to IR-11, open the vault, purge and take the readings within this time frame. The timing to reach IR-11 from IR-10 is only 2 minutes for a walking distance of approximately 560 feet. The distance to IR-12 from IR-11 is approximately 740 feet. IR-13 and IR-14 were monitored from 9:46 - 9:58 am. This is not possible as these probes are on the eastern side of the landfill wash and the walking distance is approximately 850 feet to IR-13 and another 650 feet to IR-14. Further, Mr. Clark would have to walk from IR-14 to his vehicle located at IR-10 in less than two (2) minutes to power on at 10:00 am.

This review of the Irvington Landfill monitoring event indicates Mr. Clark falsified methane monitoring data at this site.

Los Reales Landfill

Los Reales Landfill (LR) monitoring data, dated November 26, 2018, was reviewed. Zonar shows Mr. Clark's vehicle arriving at the Los Reales Landfill at approximately 7:50 am. His recorded data shows that he monitored LR-1 to LR 24. Mr. Clark's vehicle was powered on and off at several locations throughout the day and had several motion stops throughout the day. With the exception of one instance at the LR-7 probe, Mr. Clark's vehicle was not turned off or showed any motion stops near or at the probe locations he claims to have monitored. In most instances Mr. Clark's vehicle either drove by the monitored probe or was located/stopped too far from the monitored probe. Most of the monitored probes have monitored times conflicting with the

Zonar data for his vehicle. Probe LR-7 was monitored between 8:06 - 8:09 am, and Mr. Clark's vehicle showed a motion stop at this probe between 7:57 - 8:33 am. Except for probe LR-7, all the monitored probes data are questionable.
For example:

- LR-1 has recorded readings from 12:19 - 12-22 pm, however, Zonar reports his vehicle stopped at probe LR-22 from 12:10 - 12:23 pm which is approximately 3,900 feet away.
- LR-2 has recorded reading from 12:25 - 12:28 pm. Vehicle was at LR-23 during probe readings, which is approximately 3,900 feet. There is no record of his vehicle stopping at probe LR-02

Vehicle stopped at probe LR-7 from 7:57 - 8:33 am

LR-8 to L11 has recorded readings from 8:12 - 8:32am

- LR-8 - 8:12 - 8:15 am
- LR-9 - 8:18 - 8:21 am
- LR-10 - 8:23 - 8:27 am
- LR-11 - 8:29 - 8:32 am

Since Mr. Clark's vehicle was idling at probe LR-7, he would have had to walk to each probe, conduct the monitoring process, and get back to his vehicle located at LR-7, approximately 2,000 feet, which was put back in motion at 8:33 am. That is only one (1) minute after the last recorded reading of LR-11.

This review of the Los Reales Landfill monitoring event establishes that Mr. Clark falsified methane monitoring data at this site. The Los Reales Landfill methane monitoring event is of serious concern, this is an active landfill and any methane emissions at the perimeter of the landfill must be immediately identified in order to take appropriate actions to mitigate and protect the public from potential health and safety hazards.

Mr. Clark was previously disciplined for falsification of groundwater levels monitoring data. He disregarded City Administrative Directive (A.D.) 2.02-5 (Rules of Conduct), and by his actions he may have exposed the City of Tucson to potential liability and risked the public's health and safety.

Mr. Clark's actions have an adverse impact on the department and on the City of Tucson.

II. CONFIRMATION AND RECEIPT OF TRAINING

- May 10, 2016 - Administrative Directive 2.02-5 – Rules of Conduct
- November 17, 2015 - Administrative Directive 2.02-5 – Rules of Conduct
- November 17, 2015 – Administrative Directive 6.01-1 – Responsibilities Regarding Utilization of City Vehicles
- June 27, 2014 - Administrative Directive 2.02-5 – Rules of Conduct
- June 27, 2014 - Administrative Directive 6.01-1 – Responsibilities Regarding Utilization of City Vehicles
- September 19, 2012 - Administrative Directive 2.02-14 – Ethics and Conflict of Interest
- November 28, 2011 - Administrative Directive 2.02-5 – Rules of Conduct
- November 28, 2011 - Administrative Directive 6.01-1 – Responsibilities Regarding Utilization of City Vehicles
- November 28, 2011 - Administrative Directive - Ethics and Conflict of Interest

- March 17, 2011 - Administrative Directive 2.02-5 – Rules of Conduct
- March 17, 2011 - Administrative Directive 6.01-1 – Responsibilities Regarding Utilization of City Vehicles
- May 6, 2009 - Administrative Directive 2.02-5 – Rules of Conduct
- May 6, 2009 - Administrative Directive - Ethics and Conflict of Interest
- November 7, 2007 – Safe Use of City Vehicles & Equipment Training
- November 28, 2007 - Administrative Directive 2.02-5 – Rules of Conduct
- May 30, 2007 - Administrative Directive 2.02-5 – Rules of Conduct

III. PRIOR DISCIPLINE AND COUNSELING

- January 23, 2018 – Written Reprimand for falsifying monitoring data
- April 16, 2018 – Verbal counseling regarding misuse of City Vehicle for personal use
- December 11, 2017 – Letter of Counseling for discrepancies in measurement data collected
- April 18, 2016 – Written Reprimand for damaging well box
- March 2012 – Letter of Counseling for unauthorized removal from CABOP

IV. DISREGARD FOR THE TUCSON CITY CODE AND ADMINISTRATIVE DIRECTIVES:

Mr. Clark's actions are in violation of the following City Code, Administrative Directive, and Departmental Policy:

Administrative Directive 2.02-5: Rules of Conduct, Section II:

A. All employees must observe the following basic principles and rules of conduct throughout their employment with the City. Failure to observe basic principles and rules of conduct, as specified in this policy and in City Code, may result in disciplinary action up to and including discharge.
   1. Be at work on scheduled working days at the designated starting time, and remain at assigned work place during designated work hours unless permission to leave has been granted by the supervisor.
   3. Use and maintain in a reasonable manner, tools, machines, vehicles, and other City property and equipment to assure their usefulness and longevity. Report malfunctions or hazardous conditions of tools, machines, vehicles, and other City property and equipment to assure proper maintenance and safety
   10. Perform a full day's work in an efficient manner in accordance with the methods and standards required by the City.
   11. Conduct themselves in a manner, on and off duty, that:
      b. Does not discredit the City or department in a manner that affects its ability to perform its mission;
      c. Does not cause the City or department to question the employee's reliability, judgment or trustworthiness in carrying out assigned responsibilities.
   13. Truthfully give all pertinent facts on records prepared.
   16. Employees shall not engage in dishonesty, falsifying or omitting information, either verbally or in written format (including electronically) on any records including but not limited to payroll records, human resources records, information prepared or provided in response to any investigation.
   26. Employees are prohibited from using City vehicles, equipment, materials, property, or City processes for general convenience or profit, unless it is made available or provided to the

general public. As an example, employees are prohibited from sending Christmas or other personal cards through the City mail system.

Administrative Directive 6.01-1 – Responsibilities Regarding Utilization of City Vehicles, Section VIII:

A. No employee of the City is authorized to use a City vehicle for other than the performance of assigned duties, except for vehicles assigned to Mayor and Council, the City Attorney, and the City Clerk. No personal use of City vehicles is permitted unless provided for in Administrative Directive 6.01-7.

Administrative Directive 2.02-14 – Ethics and Conflict of Interest, Section III:

X. Employees are prohibited from using City vehicles, equipment, materials, property, or City processes for general convenience or profit, unless it is made available or provided to the general public. As an example, employees are prohibited from sending Christmas or other personal cards through the City mail system.

Submitting false monitoring data violates the City's obligations under the Arizona Department of Environmental Quality.

V. DISCIPLINARY ACTION

As a tenured employee with the City of Tucson, Mr. Clark knew or reasonably should have known that his actions would result in disciplinary action. His disregard for the use of taxpayer money by using the City vehicle for his own personal gain and his falsifying the testing records has a direct effect on the department's credibility. Based on his actions and in accordance with the City's policies and directives this is his notice that his employment with the City of Tucson is terminated.

Pursuant to Tucson Code § 10-03, Definitions, Just Cause, "the following constitutes just cause for discipline up to and including termination, although enumeration thereof shall not exclude other causes, namely: fraud in securing appointment; incompetence; inability to perform essential functions of assigned position with or without reasonable accommodation; dishonesty; insubordination; inattention to duties; discourteous treatment of the public, supervisors or fellow employees; violation of the ordinances of the mayor and council, the rules and regulations in the department in which an employee is employed; absence from duty without leave; intoxication on duty; violation of the city's directives on drug and alcohol use; addiction to the use of narcotics; conviction of a crime involving violence, moral turpitude, or the aggravating circumstances described in A.R.S. § 13-702 (c)(15) [relating to "hate crimes"]; and conduct, while either on or off duty , tending to cause discredit to the city or the department that affects the ability to perform its mission, or the city or the department to question an employee's reliability, judgment and trustworthiness in carrying out assigned responsibilities. In no case shall any political or religious belief of affiliation of any indefinite or vague charges, such as for the good of the service be considered just cause. Just cause cannot be based upon arbitrary or capricious reasons, but a finding of misconduct that justifies suspension, demotion or discharge need not be predicated upon the violation of any particular rule or regulation. Civil Service Commission of the City of Tucson v. Livingston, 22 Ariz. App. 183, 187188, 525 P.2d 949, 953-954 (1974).".

City's Exhibits Admitted

Exhibit A Tabs 1 – 5

Tab 1 – Notice of Intent to Discharge, February 25, 2019
Tab 2 – Attachment A
Tab 3 – Notice of Decision and Appeal Rights, March 5, 2019

Tab 4 – Personnel Action Request Form, March 5, 2019
Tab 5 – Clark Appeal Letter, March 15, 2019

Exhibit B Tabs 1 – 24

Tab 1 – Congress/Nearmont (CNM) Site Photos, Admitted with Objection
Tab 2 – CNM Site Photos, Admitted with Objection
Tab 3 – CNM Landfill Gas Probe Map
Tab 4 – CNM Zonar Maps, November 21, 2018
Tab 5 – CNM Methane Monitoring Event, November 21, 2018, Admitted with Objection
Tab 6 – Irvington Gas Probe Map
Tab 7 – Irvington Zonar Maps, December 5, 2018
Tab 8 – Irvington Methane Monitoring Event, December 5, 2018, Admitted with Objection
Tab 9 – Los Reales Gas Probe Map
Tab 10 – Los Reales Zonar Maps, November 26, 2018
Tab 11 – Los Reales Methane Monitoring Event, November 26, 2018, Admitted with Objection
Tab 12 – Vehicle Use Discrepancies – Zonar Tracking Details, Admitted with Objection
Tab 13 – Zonar System Path
Tab 14 – Employee Home Address on Record
Tab 15 – Supervisor note, April 2018, Admitted with Objection
Tab 16 – Kronos and Zonar April 2018 – December 2018
Tab 17 – L Clark's CNM Methane Field Monitoring Report, November 21, 2018
Tab 18 – L Clark's Methane Field Monitoring Report, December 5, 2018
Tab 19 – L Clark's Los Reales Methane Field Monitoring Report, November 26, 2018
Tab 20 – AZDEQ Annual Environmental Report Irvington Landfill, January 25, 2019
Admitted with Objection
Tab 21 – Harrison Water Level Data/Map, June 12 & June 19, 2018
Tab 22 – Los Reales Landfill Data, 2nd Half 2017, Admitted with Objection
Tab 23 – Vincent Mullins Landfill Data, 2nd Half 2017, Admitted with Objection
Tab 24 – Silverbell Landfill Data, 2nd Half 2017

Exhibit C Tabs 1 – 12

Tab 1 – Definition of Just Cause, Tucson Code §10-3
Tab 2 – Administrative Directive 2.02-5: Rules of Conduct
Tab 3 – Administrative Directive 6.01-1: Responsibilities 7 Utilization of City Vehicles
Tab 4 – Administrative Directive 2.02.14: Ethics and Conflict of Interest
Tab 5 – COT Human Resources Personnel File
Tab 6 – EGSD Personnel File
Disciplinary Actions
Performance Evaluations
Personnel Action Request Forms
Employee Contact, Policies & Procedures
Tab 7 – City Learn Training Records & Brownfields Training Profile/Graduate List
Tab 8 – K. Mendoza's Supervisor Record, Admitted with Objection
Tab 9 – Environmental Services Inspector Job Description, admitted with objection, Admitted with Objection
Tab 10 – Administrative Directive 2.02-16 Disciplinary Review Process
Tab 11 – Exhibit not admitted as evidence
Tab 12 – Exhibit not admitted as evidence

Appellant's Exhibits – July 23, 2019

Exhibits 1 – 12 City objected to exhibits; not entered as evidence

10:20 – 10:30 City's Opening Statement

10:30 – 10:38 Appellant's Opening Statement

10:40 – 10:50 Break

City called first witness, Lori Ehman, Environmental Scientist
10:50 – 12:35 Ms. Ehman gave testimony

12:35 – 1:15 Lunch Break

Back in open session, Ms. Dabdoub addressed the commission requesting reconsideration of preclusion of medical records. The request was denied.

1:20 – 2:38 Ms. Ehman was cross examined
2:38 – 3:00 Ms. Ehman gave testimony on redirect; the Commission asked clarifying questions and witness was excused.

3:00 – 3:05 The Civil Service Commission asked counsel to consider dates for a second day of hearing. All parties are available for day two on July 23, 2019.

3:05 – 3:15 Break

City called second witness, Kristie Mendoza, Environmental Scientist
3:15 – 4:07 Ms. Mendoza gave testimony
4:07 – 5:05 Ms. Mendoza was cross examined
NOTE: Cross examination did not conclude, will continue on day 2 of hearing

5:05 Hearing adjourned for the day. Day 2 continuation scheduled for July 23, 2019 commencing after the Civil Service quarterly meeting.

July 23, 2019 – Day 2

The Civil Service Commission of the City of Tucson met at 9:30 AM on Tuesday, July 23, 2019 at City Hall, 255 W. Alameda, 1st Floor Conference Room in Tucson, Arizona, for day 2 of the Appeal of Termination filed by Luis Clark from the Environmental & General Services Department.

Present were Chairperson Thomas Palomares, Commission Members Becky Montaño and Paul Fimbres. Staff present: Donna Aversa, Legal Counsel; Elsa Quijada, HR Administrator, Secretary; and Armida Saufley, Executive Assistant of Human Resources, Recording Secretary.

Brenda Dabdoub, ESQ, represented Mr. Clark; Jacinta Figueroa, Principal Assistant City Attorney, represented the Environmental & General Services Department. Director Carlos De La Torre was also present.

Ms. Dabdoub offered to enter exhibits 1 through 12 as evidence. Ms. Figueroa objected to the exhibits as not having been previously disclosed and reiterated that the Commission had previously ruled on exhibits.

At 9:55 AM a motion made by Commissioner Fimbres, duly seconded, to go into Executive Session for legal advice pursuant to A.R.S. §38-431.03(A)(3) and was passed by a voice vote of 3 – 0. The Commission resumed the open meeting at 10:15 AM.

In open session, the Chairperson Palomares addressed counsel about previous rulings precluding exhibits having to do with public records, medical records, labor agreements and related matters. Therefore, except for appellant's exhibits 4 and 11, which are entered as part of the City's exhibits, no exhibits were admitted as evidence and instructed counsel to proceed with witnesses.

Witness Kristie Mendoza, Environmental Scientist, continued with cross examination
10:26 – 11:03 Ms. Mendoza continued testimony on cross examination
11:03 – 11:20 Ms. Mendoza gave testimony on redirect and witness was excused

11:20 – 11:27 Break

City called third witness, Frank Bonillas, Project Coordinator
11:27 – 12:30 Mr. Bonillas gave testimony

12:30 Lunch Break

1:05 – 2:16 Mr. Bonillas gave testimony on cross examination
2:16 – 2:30 Mr. Bonillas gave testimony on redirect and witness was excused

2:30 – 2:40 Break

City called fourth witness, Richard Byrd, Environmental Manager
2:40 – 2:50 Mr. Byrd gave testimony
2:50 – 3:07 Mr. Byrd gave testimony on redirect and witness was excused

City called fifth witness, Carlos De La Torre, Director
3:08 – 3:35 Mr. De La Torre gave testimony
3:35 – 3:40 Mr. De La Torre gave testimony on cross examination

3:40 – 3:45 Break

Back in session, counsel asked that this hearing be continued due to unforeseen circumstances with Mr. Clark. The Civil Service Board asked if appellant witnesses were present to give testimony. There were two witnesses present and the Board ruled to have the hearing continue to take testimony of witnesses present. The Board also discussed a day three for the hearing and settled on August 23 with a start time of 8:30 AM.

4:05 – 4:14 Mr. De La Torre continued testimony on cross examination and witness was excused

4:14 City Rests

Appellant called first witness, Justin Nichols, Supervisor
4:15 – 4:18 Mr. Nichols gave testimony
4:18 – 4:24 Mr. Nichols gave testimony on cross examination
4:24 – 4:27 Mr. Nichols gave testimony on redirect and witness was released

Appellant called second witness, Javier Montante, Retired City Employee

4:30 – 5:15	Mr. Montante gave testimony
5:15 – 5:20	Mr. Montante gave testimony on cross examination
5:20 – 5:22	Mr. Montante gave testimony on redirect and witness was excused

5:20 Hearing adjourned for the day. Day 3 continuation scheduled for August 23, 2019, start time 8:30 AM

August 23, 2019 – Day 3

The Civil Service Commission of the City of Tucson met at 8:30 AM on Friday, August 23, 2019 at City Hall, 255 W. Alameda, 1st Floor Conference Room in Tucson, Arizona, for day 3 of the Appeal of Termination filed by Luis Clark from the Environmental & General Services Department.

Present were Chairperson Thomas Palomares, Commission Members Becky Montaño and Paul Fimbres. Staff present: Donna Aversa, Legal Counsel; Elsa Quijada, HR Administrator, Secretary; and Armida Saufley, Executive Assistant of Human Resources, Recording Secretary.

Brenda Dabdoub, ESQ, represented Mr. Clark; Jacinta Figueroa, Principal Assistant City Attorney, represented the Environmental & General Services Department. Director Carlos De La Torre was also present.

Appellant called third witness, Luis Clark, Appellant

8:30 – 9:48	Mr. Clark gave testimony

9:48 – 10:00 Break

10:00 – 10:45	Mr. Clark gave testimony on cross examination
10:45 – 11:00	Mr. Clark gave testimony on redirect; the Commission asked clarifying questions and the witness was released

11:00 Appellant Rests

11:00 – 11:15 Break

City called rebuttal witnesses

11:15 – 11:18	Mr. Carlos De La Torre gave testimony on rebuttal
11:18 – 11:21	Mr. De La Torre gave testimony on cross examination; the Commission asked clarifying questions and the witness was released
11:22 – 11:25	Mr. Frank Bonillas gave testimony on rebuttal
11:25 – 11:31	Mr. Bonillas gave testimony on cross examination and witness was released

11:31 – 11:40 Break

11:40 – 11:54 City closing statement

11:54 – 12:25 Appellant closing statement

12:25 – 12:30 City Rebuttal Statement

At 12:30 PM a motion made by Commissioner Fimbres, duly seconded, to go into Executive Session for legal advice pursuant to A.R.S. §38-431.03(A)(3) and was passed by a voice vote of 3 – 0. The Commission resumed the open meeting at 12:40 PM.

12:40 – 1:00 Lunch Break

1:00 – 1:10 Civil Service Commission Deliberations

In open session at the conclusion of closing statements, based on the testimony presented and the exhibits admitted into evidence, a motion by Chairperson Palomares, duly seconded, to find the Appellant knew or should have known that his conduct could lead to disciplinary action, and the appeal of Luis Clark be denied and that the disciplinary action imposed upon him be affirmed for the reason that there was just cause for the discipline imposed, was passed by a roll call vote of 3-0.

Hearing Adjourned at 1:10 PM.

10/21/19

Tom Palomares, Chair
Civil Service Commission

Date